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Appeals Panel Upholds Dismissal Of Lawsuit on Nicaraguan Policy

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WASHINGTON, Aug. 13 — A Federal appeals court today upheld the dismissal of a lawsuit accusing the United States Government of illegally supporting the Nicaraguan insurgents.

In effect, the court ruled that in the absence of explicit Congressional restrictions on Government support for the rebels, it could not entertain a lawsuit challenging that support.

The suit had been brought by 12 Nicaraguans who said that they or members of their families had been victims of rebel violence, by 12 members of the House of Representatives who said the Government was illegally waging war, and others.

All the plaintiffs sought an order ending Government support for the rebels. The Nicaraguan plaintiffs also sought monetary damages.

The three-judge panel ruled that judges could not intervene even if the plaintiffs were correct in alleging that President Reagan and other officials had supported rebel attacks in violation of the Constitution, acts of Congress and international law.

Judicial Intervention Precluded

Judge Antonin Scalia said in a 14-page opinion for the panel of the United States Court of Appeals for the District of Columbia that it was not necessary to consider the truth or falsity of the plaintiffs' allegations or the legality of Government policy.

He cited legal doctrines that he said precluded judicial intervention in the absence of legislation explicitly authorizing such lawsuits.

Alluding to the fact that Nicaraguan citizens were among the plaintiffs, Judge Scalia said there was a "danger of foreign citizens' using the courts in situations such as this to obstruct the foreign policy of our Government."

As to the role of the House members, he said that legal precedents required dismissal of their contention that President Reagan had been waging war illegally without a congressional declaration of war. This presents "a nonjusticiable political question," Judge Scalia said.

Another panel member, Judge Ruth Bader Ginsburg, added in a concurring statement that the Congressional plaintiffs' contention was "not ripe for judicial review" because there was no

"constitutional impasse" between Congress and the President.

"No gauntlet has been thrown down here by a majority of the members of Congress," she said. "On the contrary, Congress expressly allowed the President to spend Federal funds to support paramilitary operations in Nicaragua."

She cited the Intelligence Authorization Act for fiscal 1984, passed in 1983 and no longer in force, in support of this statement.

She made no reference to more recent legislation authorizing humanitarian assistance to the rebels but not direct military aid, presumably because the suit centered on activities in fiscal 1984 and earlier.

The defendants in the suit included President Reagan, William J. Casey, Director of Central Intelligence, various current and former Government officials and others, including a purported leader of the Nicaraguan rebels.

They were charged with providing financial, technical and other support to rebel "terrorist" groups operating training camps in the United States and Central America, resulting in attacks on innocent Nicaraguan civilians. The Administration has disputed characterization of the rebels as terrorists.

Request for Order Called Moot

Judge Scalia said the plaintiffs' request for an order requiring compliance with the so-called Boland Amendment, which barred aid aimed at overthrowing the Nicaraguan Government, was moot because Congress allowed the measure to expire Sept. 30, 1983.

He gave various reasons for dismissing claims for alleged violations of the Alien Tort Statute, the War Powers Resolution of 1973, the Neutrality Act, other statutes governing security and intelligence, the Fourth and Fifth Amendments, and the constitutional provision reserving to Congress the power to declare war.

It would be "an abuse of our discretion," Judge Scalia said, to consider ordering an end to Government aid for the rebels, "at least where the authority for our interjection into so sensitive a foreign affairs matter as this are statutes no more specifically addressed to such concerns" than those cited by the plaintiffs.